

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

INTERNATIONAL ASSOCIATION
OF MACHINISTS AND AEROSPACE
WORKERS, AFL-CIO, EAST BAY
AUTOMOTIVE MACHINISTS
LODGE NO. 1546, DISTRICT LODGE
190,

Petitioner,

and

NATIONAL LABOR RELATIONS
BOARD,

Respondent,

SJK, INC. d/b/a FREMONT FORD,
Intervenor.

CASE NO. 16-74025

Board Case No. 32-CA-151443

SJK, INC. d/b/a FREMONT FORD,

Petitioner,

and

NATIONAL LABOR RELATIONS
BOARD,

Respondent,

INTERNATIONAL ASSOCIATION
OF MACHINISTS AND AEROSPACE
WORKERS, AFL-CIO, EAST BAY
AUTOMOTIVE LODGE NO. 1546,
DISTRICT LODGE 190,
Intervenor.

Case No. 17-71210

Board Case No. 32-CA-151443

NATIONAL LABOR RELATIONS
BOARD,

Petitioner,

and

SJK, INC., d/b/a FREMONT FORD,

Respondent.

Case No. 17-71337

Board Case No. 32-CA-151443

STATUS REPORT

**To the Honorable, the Judges of the United States
Court of Appeals for the Ninth Circuit:**

1. On May 21, 2018, the Supreme Court issued its decision in Epic Systems Corp. v. Lewis, No. 16-285, together with its decisions in Ernst & Young LLP v. Morris, No. 16-300 and National Labor Relations Board v. Murphy Oil USA, Inc., No. 16-307, cited as 584 U.S. ____ (2018). The Court held, contrary to the decision of the National Labor Relations Board and two courts below, that the National Labor Relations Act did not prohibit collective or class action waivers in arbitration agreements. The Court relied on the arbitration policy contained in the Federal Arbitration Act, 9 U.S.C. §§ 2, 3 and 4.

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2. On the same day, the NLRB issued a press release stating that, “The Board currently has 55 pending cases with allegations that employers violated the National Labor Relations Act (“the Act”) by maintaining or enforcing individual arbitration agreements or policies containing class- and collective-action waivers. The Board is committed to expeditiously resolving these cases in accordance with the Supreme Court’s decision. Many other similar cases previously issued by the Board are pending before the federal courts of appeals.” This can be found at <https://www.nlr.gov/news-outreach/news-story/supreme-court-issues-decision-nlr-v-murphy-oil-usa>.

3. Respondent SJK has contacted counsel for the NLRB to discuss the status of this appeal and the underlying case before the NLRB. Due to both the NLRB’s counsel personal jury duty obligation and the obvious avalanche of cases involving allegations that employers violated the NLRA by maintaining individual arbitration agreements containing class/collective action waivers which now suddenly require attention, NLRB’s counsel represented to Respondent’s counsel on May 25th that her office has not yet been able to evaluate their plan for this matter. SJK plans to request the NLRB vacate the underlying NLRB ruling that SJK’s arbitration policy was unlawful—such vacation being consistent with the ruling in *Epic Systems*. Should the NLRB agree to this request, this may make this appeal before the 9th Circuit moot, or at least significantly change its dimensions.

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Counsel for NLRB has indicated that she requires approximately one more week to ascertain the NLRB's position on how to move this matter forward. Accordingly, Respondent requests that the Court not take further action on this matter for two more weeks.

Respectfully Submitted,

/s/ Roman Zhuk

Roman Zhuk

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Attorneys for SJK, INC. dba FREMONT
FORD

Dated at Half Moon Bay, CA
this 29th day May, 2018

INTERNATIONAL ASSOCIATION
OF MACHINISTS AND AEROSPACE
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CERTIFICATE OF COMPLIANCE

Pursuant to Federal Rule of Appellate Procedure 32(g)(1), the Board certifies that its motion contains 371 words of proportionally-spaced, 14-point type, the word processing system used was Microsoft Word 2010.

CERTIFICATE OF SERVICE

I am a citizen of the United States and an employee in the County of San Mateo, State of California. I am over the age of eighteen years and not a party to the within action; my business address is 300 Rancheros Drive, Suite 375, San Marcos, California 92069.

I hereby certify that on May 29, 2018, I electronically filed the foregoing STATUS REPORT AND MOTION FOR FURTHER RELIEF with the United States Court of Appeals, Ninth Circuit, by using the Court's CM/ECF system.

I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the Notice of Electronic Filing by the Court's CM/ECF system.

I certify under penalty of perjury that the above is true and correct.
Executed at San Marcos, California, on May 29, 2018.

/s/ Kathryn M. Cherry
Kathryn M. Cherry